

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION  
3 HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE  
4

5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) CERTIFIED TRANSCRIPT  
7 vs. )  
8 JOSEPH MARTIN GOVEY, ) Case No.  
9 Defendant. ) 8:17-cr-00103-CJC-1  
10 \_\_\_\_\_ )  
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13 REPORTER'S TRANSCRIPT OF  
14 PRETRIAL CONFERENCE  
15 FRIDAY, FEBRUARY 23, 2018  
16 11:02 A.M.  
17 SANTA ANA, CALIFORNIA  
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1                   **SANTA ANA, CALIFORNIA; FRIDAY, FEBRUARY 23, 2018**

2                   **11:02 A.M.**

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4                   THE COURTROOM DEPUTY: Calling Item No. 1,  
11:02AM 5           SACR 17-103, United States of America versus Joseph Martin  
6           Govey.

7           Counsel, please state your appearances.

8           MR. MARRETT: Good morning, Your Honor. Brad  
9           Marrett and Gina Kong on behalf of the United States.

11:02AM 10          THE COURT: Good morning to both of you.

11           MR. SCOTT: Good morning, Your Honor. Tim Scott for  
12           Mr. Govey. He's present before the Court in custody.

13           THE COURT: Hello, Mr. Govey. Hello, Mr. Scott.

14           Well, this morning isn't going to go the way I was  
11:02AM 15           anticipating it, to be perfectly frank. I was quite troubled  
16           when I received the government's in-camera filing yesterday, so  
17           much so that I'm of the mindset that Mr. Govey's Sixth  
18           Amendment constitutional rights to a speedy trial, compulsory  
19           process and confrontation is being compromised.

11:03AM 20           I have a few questions for you, Mr. Scott, that I'd like  
21           first, and then I want to hear from the government. Would you  
22           be good enough to go to the lectern, please.

23           MR. SCOTT: Yes, sir.

24           THE COURT: I have a general sense, Mr. Scott, of  
11:03AM 25           Mr. Govey's theory on attacking the credibility of the

1 percipient witnesses, particularly Mr. Beeman and  
2 Deputy Larson. And I think today is really the day of  
3 reckoning, and I need to know with as much specificity as you  
4 can give me what is the bias, what is the basis for the bias,  
11:04AM 5 what documents or information do you have to support that, how  
6 would you prove that?

7 I realize you're at a disadvantage that there's 20,000  
8 pages of documents that the government's motion that was filed  
9 in camera, which I put on the public docket, because I didn't  
11:04AM 10 see anything in the motion itself that was privileged. And I  
11 know you don't know what's on there. I don't know what's on  
12 there because there's no way with five days before trial I can  
13 look at over 20,000 pages of documents to determine really  
14 important issues on whether there's attorney-client privilege,  
11:05AM 15 work-product privilege, deliberative privilege or that I would  
16 be compromising the safety of witnesses, cooperating witnesses  
17 for the DA or for the sheriff's department.

18 I have had security cases, national security cases where  
19 there's classified information and a defendant is charged, and  
11:05AM 20 you're put in that uncomfortable position of, "Government, if  
21 you want to charge a spy or a terrorist with these serious  
22 charges, you're going to have to cough up some of this  
23 information." And the government is given the choice, cough it  
24 up and reveal your sources, or dismiss the charges. We're past  
11:06AM 25 that position now. And I take exception, and I'm sure you

1 agree with this, I do not like protective orders that say,  
2 "okay, here is some sensitive information. You can see it,  
3 Mr. Scott, but you cannot share it with Mr. Govey."

4 He's supposed to have a public and speedy trial. How in  
11:06AM 5 the world are you -- is he not able to see that, and how are  
6 you not able to use it at the trial? I have a very negative  
7 reaction to that. So you can take me at my word, I think it's  
8 a very serious situation we're in, and now I need to know from  
9 you in specificity, not generalities, what do you know, what do  
11:07AM 10 you have so I can make an informed decision on where we go from  
11 here.

12 MR. SCOTT: Yes, Your Honor. I'll share with the  
13 Court what I think I have, what I think I know. I'm tempted to  
14 paraphrase Secretary of Defense Rumsfeld about known knowns,  
11:07AM 15 known unknowns and unknown unknowns. But suffice it to say,  
16 I'll start with what I was handed this morning, which is a  
17 February 23rd, like I said, a letter dated today, which  
18 encloses a disc containing Bates-numbered Tier 1 confidential  
19 discovery. And the Bates range now goes up to 75,462 pages.  
11:07AM 20 So I'll need to both make a description and a confession along  
21 those lines.

22 I went back to the protective order to make sure that --  
23 what Tier 1 meant versus what Tier 2 meant. Because Tier 1  
24 discovery, as I looking, again, is discovery that purportedly,  
11:08AM 25 according to the protective order, I'm not supposed to share

1 with Mr. Govey. Certainly he can't even see it. I can't even  
2 show him the pieces of paper. And I just -- I just saw again  
3 this morning, I think technically under the wording of the  
4 protective order, literally nobody, other than me, is supposed  
11:08AM 5 to look at it, unless I'm mistaken.

6 And so I have to -- I have to fall on my sword here that  
7 in trying to review 75,000 pages, I've been having a paralegal  
8 try to help me with that, and I guess I violated that order.  
9 So I just want to confess that to the government and the Court.

11:09AM 10 I didn't do it --

11 THE COURT: That's not a problem. That's not a  
12 problem. And when I saw the protective order, candidly, that I  
13 signed, it was pursuant to the parties' stipulation. I was  
14 troubled with it. And I figured if there was a really  
11:09AM 15 important document that you found, you were going to bring it  
16 to my attention and say, "Judge, you need to release me from  
17 this protective order, because I need to discuss it with  
18 Mr. Govey and I intend to use it at trial."

19 So I didn't want to start getting bogged down in legalese.  
11:09AM 20 It seemed you had agreed with the government to that protective  
21 order, so I signed it. But I had concerns about it.

22 MR. SCOTT: Well, I did too. And I think I said  
23 this on the record and tried to bake in what I could into the  
24 order is that I -- I sort of signed it grudgingly just to get  
11:09AM 25 the darn stuff to start with. And then the Court's right, if I

1 can then identify what's helpful and usable, you know, then we  
2 can fight that good fight at some later point was kind of my  
3 plan. But the problem is I just -- there's just too much  
4 information to, No. 1, to digest in that period of time, much  
11:10AM 5 less to then start bringing, you know, motions and litigating  
6 the issue in any intelligent way.

7 So where I am is that I have 75,000 pages where in the --  
8 we're in the process with the help of a paralegal of trying to  
9 digest it. We're nowhere near done with that. In fact, I  
11:10AM 10 really don't have a solid update from my paralegal. We've both  
11 been working around the clock and neither one of us see an end  
12 in sight in terms of being able to have this reviewed and in a  
13 way to use it before trial. And that's just the facts of it.  
14 And --

11:11AM 15 THE COURT: And that doesn't surprise me. So that  
16 doesn't even address the now over 20,000 pages of documents  
17 that is the subject of this motion that I received yesterday.

18 MR. SCOTT: And, you know, it's not -- it would be  
19 one thing if we envision a situation where this isn't Tier 1  
11:11AM 20 versus Tier 2, and I could bring a disc to the MDC and, you  
21 know, then Mr. Govey would be involved looking at it and we  
22 would have a team looking at it. You know, that doesn't exist  
23 here because I can't share it with him. And not only that, I  
24 can't even share with him the things that I've looked at to see  
11:11AM 25 if -- you know, to see if it matters, to see how it squares

1 with his experience in the Orange County jail.

2 Because to go to the merits of it just a little bit, as  
3 I've said, and I hope to incorporate by reference, you know,  
4 anything that I've written and said about this up until today  
11:11AM 5 in terms of our theory of the case, but we've always said that  
6 Mr. Govey -- this isn't just a matter -- forgive me for  
7 starting and restarting. This isn't a matter that he happened  
8 to be arrested by deputies who themselves were involved in the  
9 jail scandal. That would be one thing. Where, you know, the  
11:12AM 10 invoking on the stand or, you know, having violated other  
11 defendants' constitutional rights or being the subject of  
12 investigation, I think that those are all credible areas of  
13 cross-examination for any defendant that they arrest, you know,  
14 going forward, but this isn't that case.

11:12AM 15 As we've always said, our case is that plus the fact that  
16 Mr. Govey was sort of at ground zero for the jail scandal  
17 itself. And what I mean by that is he was one of the inmates  
18 that was housed, that the deputies and the special handling  
19 unit was interested and continued to investigate. They  
11:13AM 20 believed that he was involved in some sort of a gang. And  
21 again, we dispute those facts, but that's the case they were  
22 building.

23 He was among the people who was subjected to what we would  
24 argue is a pretty troubling or suspicious practice of arresting  
11:13AM 25 him on relatively -- I don't want to say minor, but fairly



1 pedestrian charges. Sort of run-of-the-mill Superior Court  
2 felony charges. But then while he's in custody on the strength  
3 of informants who have been housed next to him, now suddenly  
4 he's looking down the barrel of solicitation of murder and a  
11:13AM 5 murder conspiracy, very, very serious charges that rest on the  
6 good word, I say facetiously, of informants.

7 So he was, in our view, a victim of some of the real  
8 misconduct that has been identified through the strong work of  
9 Scott Sanders and others in the Orange County jail. His was  
11:14AM 10 among the cases -- and I think it's kind of the cutting edge of  
11 the cases through a defense attorney named Renee Garcia, who  
12 was working closely with Mr. Sanders, who pressed this issue  
13 and was sort of in the vanguard of litigating the informant  
14 issues and the fact that these files -- these records were not  
11:14AM 15 being turned over and that they were -- the defense attorneys  
16 felt that they were on the wrong end of sort of a shell game of  
17 the kind that finally came to light in the *Dekraai* hearings.

18 THE COURT: Do you have any of the specific names  
19 that are involved that you can tell me?

11:14AM 20 MR. SCOTT: In terms of officers?

21 THE COURT: Yes.

22 MR. SCOTT: Well, to start with, the -- one of the  
23 informants that was central against Mr. Govey was a person by  
24 the name of Alexander Frosio. And one of the important facets  
11:15AM 25 of the Superior Court cases that were pending against Mr. Govey

1 was repeated requests for TRED records or special handling unit  
2 logs or other materials that would document this gentleman,  
3 Mr. Frosio. So we've been sort of using the shorthand "the  
4 Frosio file." And, in fact, I'll represent to the Court that  
11:15AM 5 I've -- you know, I continue to serve subpoena duces tecums for  
6 that file from the special handling unit. And it's my  
7 understanding I have not received it yet.

8 There's the gentleman that the Court might recall I had  
9 some interaction with Bryan Larson about. There was a  
11:15AM 10 different informant by the name of Fenstermacher who was  
11 cultivated and used as an informant and was also gathering  
12 evidence for Mr. Govey.

13 THE COURT: Against Mr. Govey?

14 MR. SCOTT: Yes, sir, against Mr. Govey.

11:15AM 15 Now I should say parenthetically that he also sort of  
16 inadvertently created some *Brady* against Mr. Govey in that he  
17 disclosed that Mr. Govey at some point had gotten himself a  
18 quote-unquote "in the hat" where he had been purportedly green  
19 lighted by the Aryan Brotherhood and several organizations.  
11:16AM 20 Mr. Fenstermacher shared that. And then that information was  
21 not disclosed to the government -- or to the defense in the  
22 Superior Court case. So it's sort of a confluence of these  
23 things of --

24 THE COURT: This case is a 2012 solicitation of  
11:16AM 25 murder case?

1 MR. SCOTT: Correct. Along with -- there's multiple  
2 counts, but that was certainly the most serious in the lead  
3 count.

4 It was my understanding -- it is my understanding that it  
11:16AM 5 was Mr. Beeman who led the charge in organizing much of these  
6 informant campaigns and was instrumental in building the  
7 solicitation case and these other cases against Mr. Govey.

8 There was both Mr. Beeman as well as several other  
9 Sheriff's deputies that testified in front of the grand jury  
11:17AM 10 about this solicitation case, and yet failed to disclose the  
11 fact that Mr. Govey was purportedly in the hat based on their  
12 own informant that they had been cultivating. So it was, I  
13 guess when in State Court is a *Johnson* issue, but it's also a  
14 *Brady* issue to the extent it was undisclosed.

11:17AM 15 And then ultimately it came to a head where because of  
16 Scott Sanders' parallel work in the *Dekraai* case, it started  
17 coming to light that there are records of informants. There is  
18 a Frosio file. There are housing records in the special  
19 handling unit, records that shed light on this informant  
11:17AM 20 program that they had. And rather than disclose those, because  
21 Judge Goethals, who coincidentally was presiding over  
22 Mr. Govey's case as well as Mr. Dekraai finally said, "Look,  
23 you have to turn over this Frosio file." And shortly  
24 thereafter, the case against Mr. Govey was dismissed.

11:18AM 25 And so based on the whole backstory of the way they built

1 that case against Mr. Govey, combined with the fact that it's  
2 the same officers at play today, at least insofar as it's  
3 Mr. Beeman and Mr. Larson who were both special handling  
4 deputies, it's our view that, one, their testimony is subject  
11:18AM 5 to attack just on the credibility basis. That's apart and  
6 aside from Mr. Govey being at the epicenter, so to speak, of  
7 this scandal.

8 But certainly given the fact that he was at the epicenter  
9 of it, it is our theory that because they did their best to  
11:18AM 10 build this case against Mr. Govey, they did it wrongly, they  
11 cheated in order to do it. They violated the constitution in  
12 doing it. And when they were caught or about to be caught and  
13 the case was dismissed instead, that leaves a bad taste in  
14 their mouth. And probably they rationalized that justice would  
11:19AM 15 be served in getting him for something or getting him more time  
16 for what -- than he would otherwise get for the subsequent  
17 thing that they arrested him for.

18 And I want to be clear, you know, can I stand here and  
19 say, you know, that these guys planted -- you know, planted  
11:19AM 20 methamphetamine on him and, you know, ginned up an entire case?  
21 I'm not saying that because I don't have the facts as I stand  
22 here to make that allegation. But the allegation I do make,  
23 and it is supported by the facts, is that when they happened  
24 upon Mr. Govey with a very pedestrian, relatively low level --  
11:19AM 25 not relatively low level. For federal court standards,

1 absolutely low level, 37-gram methamphetamine case, they made a  
2 deliberate --

3 THE COURT: Let me interrupt you because it's  
4 obviously important to any questions I have. 37.5 grams,  
11:20AM 5 that's less than two ounces?

6 MR. SCOTT: Yes.

7 THE COURT: Does that fit in a Ziploc little baggie?

8 MR. SCOTT: Oh, absolutely. It fits in --

9 THE COURT: Snack size? Sandwich size?

11:20AM 10 MR. SCOTT: It fits comfortably in a sandwich size.

11 It would fit in a snack size for certain. Yeah. That's --  
12 it's really in terms of net, because there's 28 grams in an  
13 ounce; right? 28 and change, so it's -- you know, it's an  
14 ounce and change essentially. Not quite an ounce and a half, I  
11:20AM 15 guess.

16 THE COURT: I can't remember ever being involved in  
17 a federal case with such a low quantity.

18 Let's just assume it was for personal and distribution. I  
19 know you dispute that, but I -- it's not my call on what cases  
11:21AM 20 the federal government brings, but I'm just dumbfounded that we  
21 would initiate the time, expense and trouble of the federal  
22 machinery to go after such a low quantity of drugs. I mean, if  
23 this was a murder case, it was a drug cartel, it was the Aryan  
24 Brotherhood murdering people, you know, I understand. I would  
11:21AM 25 endorse that. But I'm absolutely baffled that the government

1 charged this case and pursued it especially with all the  
2 baggage of the witnesses.

3 And I've always been troubled that this is any way  
4 compromising the federal civil rights investigation that we  
11:21AM 5 had. And I was very troubled that I had to sign off on that  
6 order knowing that you and Mr. Govey are getting information  
7 that's really important that's confidential.

8 It's relevant, but it's, I guess, not the heart of our  
9 focus. And I interrupted you. Please keep going, because the  
11:22AM 10 more detail you can give me, the more helpful it is. And I  
11 think you left off saying, okay, case dismissed, Mr. Govey was  
12 there. You don't know whether they deliberately planned on  
13 being there. But once they saw him there -- and this is, I  
14 assume, Deputy Larson?

11:22AM 15 MR. SCOTT: Yeah, I think the testimony that came  
16 from Deputy Larson was that -- and frankly, I'm prepared to  
17 credit it that they didn't necessarily know that Mr. Govey was  
18 going to be at that place at that time that they were sort of  
19 shaking down that house more generally. But what he told --

11:23AM 20 THE COURT: The location is known for white  
21 supremacists?

22 MR. SCOTT: Yeah. That's the way they describe it,  
23 yeah, that it's a crash pad of sorts. And they were doing  
24 probation checks to see what they could find there.

11:23AM 25 But what Deputy Larson told us himself at the Fifth

1 Amendment kind of, I guess, 104 hearing that we held was that  
2 as soon as he -- as soon as it was learned that Mr. Govey was  
3 there, somebody called Beeman immediately. And Beeman came  
4 down afterwards.

11:23AM 5 So I think it's pretty clear that once Mr. Govey was on  
6 the radar, then Beeman responds. And all of a sudden it's a  
7 case they're interested in, and they're really pressing against  
8 Govey.

9 THE COURT: Did Mr. Beeman actually interrogate  
11:23AM 10 Mr. Govey?

11 MR. SCOTT: He was the primary interrogator. It was  
12 Larson and Beeman were the two that were involved in  
13 questioning every person at that property. So absolutely, yes,  
14 it was both of them together.

11:24AM 15 THE COURT: Did Mr. Govey agree to talk to them?

16 MR. SCOTT: He invoked his rights. There was a  
17 little bit of back and forth, but -- and at one point Mr. Govey  
18 did make a statement, you know, "What am I charged with?"

19 And they said, "Sales of methamphetamine."

11:24AM 20 Mr. Govey responds, "Sales? You got to be kidding me. I  
21 use meth; I don't sell meth. I think you're stretching it,"  
22 words to that effect. But he did invoke. And so it wasn't a  
23 lengthy interrogation.

24 THE COURT: What did they ask him, if you know?

11:24AM 25 MR. SCOTT: They asked him what he was doing at the

1 property, if he lived there. And he invoked in short order.  
2 And then -- but it was Mr. Govey who, after he invoked, asked,  
3 "What am I being charged with?" So it wasn't a lengthy  
4 interrogation by any stretch. So I don't think they got any  
11:24AM 5 substance before that.

6 **(Mr. Scott and defendant confer off the record.)**

7 MR. SCOTT: So where I left off was, you know,  
8 trying to give the benefit of the doubt -- I'm trying to be  
9 fair about this and not claiming that they, you know, planted  
11:25AM 10 evidence per se or did any of that. But it's absolutely our  
11 view, and I think this is where the Court asked the question  
12 about, you know, the size of this case going to federal court,  
13 that it was pitched to federal court and brought to federal  
14 court specifically so that they could figure out how to give  
11:25AM 15 Mr. Govey more prison time.

16 THE COURT: And do you know who pitched it to the  
17 feds?

18 MR. SCOTT: I think it was Mr. Sanders who was part  
19 of the task force that included Mr. Beeman and others that has  
11:25AM 20 been working in conjunction with the Orange County Sheriff's  
21 Department on Mr. Govey and people like him for a number of  
22 years now.

23 What I was about to say is the reason I'm comfortable  
24 making an allegation like that is the Court might recall at the  
11:26AM 25 last hearing here I essentially said something like that. I



1 said, "I'm moving for the production of any, you know, text  
2 messages or e-mails or other communication between Sanders and  
3 Beeman" or "Sanders and other Orange County Sheriff deputies,"  
4 and that was granted.

11:26AM 5 And the government did provide some evidence like that  
6 including a text message where Agent Sanders says, "I'd like to  
7 take this case federal. I talked to the Orange County deputies  
8 and they're okay with it as long as I can get him more prison  
9 time." And then the deputy on the other side, who I presume is  
11:26AM 10 Beeman, although I don't know that from the text itself said,  
11 "Good job," you know, thumbs up essentially.

12 And so it's -- there's documents demonstrating that this  
13 is a federal case only so that Mr. Govey can get more prison  
14 time, specifically the minimum mandatories that apply based on  
11:27AM 15 his record and some of the other things.

16 I -- particularly now that we're in the posture that we're  
17 in where the -- where Deputy Larson took the witness stand in  
18 this case and explained under oath that he only invoked in a  
19 prior case because he got very bad advice from a -- from an  
11:27AM 20 attorney that was appointed to him by the union and that he had  
21 nothing to hide and nothing to fear and had not tried to  
22 violate defendant's rights through Massiah violations or  
23 otherwise, he made some pretty stark claims.

24 And I even gave him an out as we were looking at reports  
11:27AM 25 that he had written where he admitted in writing trying to work

1 with informants to build cases against inmates. And he denied  
2 it. He said, "I think I used the wrong words" or "I wrote that  
3 incorrectly" or something.

4 And I even gave him the out. I said, "Isn't it possible,  
11:28AM 5 Deputy Larson, that you just -- you hadn't received this  
6 Massiah training by then? You didn't know -- you were doing  
7 that, but you didn't know it was wrong?"

8 And he wouldn't acknowledge that. He said, "No, I never  
9 did that under any circumstances even before I knew that it was  
11:28AM 10 wrong."

11 And so how that all ties up is that I think now --  
12 especially now with all that water under the bridge, anything  
13 that the Department of Justice has that shows that that is what  
14 they were doing, you know, that they were building and  
11:28AM 15 cultivating informants like that, that they were doing these  
16 things that violated inmates' rights, particularly now that  
17 they've denied it under oath, denied it in any number of  
18 different settings and given the fact that it all involves  
19 Mr. Govey, you know, it is relevant. And that's the reason  
11:29AM 20 that I think the government's motion to preclude that was  
21 denied, as I understand it, and that's the reason this  
22 discovery was ordered to be produced.

23 But now I'm in the position of trying to digest 75,000  
24 pages without being able to discuss any of it with Mr. Govey  
11:29AM 25 and apparently whatever else exists in camera. I can't do it

1 before the trial begins. And I would have filed a motion to  
2 dismiss in writing a week ago. And I should say for the  
3 record, too, that when we stood here at the last status and  
4 I -- you know, I sort of sent that shot across the bow again,  
11:29AM 5 and I said I hadn't received a piece of paper since we got a  
6 continuance, and the government represented that they were 75  
7 percent done with their review, but yet I still hadn't received  
8 any paperwork. And after that hearing I then started receiving  
9 it every couple days or something like that to the point we're  
11:29AM 10 now within the past whatever it was, week, week and a half  
11 since our last hearing, we're now up to 75,000 pages, probably  
12 more, if we include Tier 2 discovery, if we include  
13 non-protected discovery. And then, of course, whatever else is  
14 in camera.

11:30AM 15 So what I was starting to say is, you know, I was tempted  
16 to -- just to file the motion to dismiss. But the pickle that  
17 puts Mr. Govey in is that that automatically tolls time under  
18 the Speedy Trial Act. So it's kind of a damned if you do,  
19 damned if you don't. He's been agitating -- and properly so,  
11:30AM 20 and I don't fault him for it -- he's been wanting his day in  
21 court for some time. It's caused tremendous strain between the  
22 two of us when I can't deliver that for him. It causes  
23 tremendous strain between us when I can't share discovery with  
24 him. He's kind of coming out of his skin, and I really don't  
11:30AM 25 blame him.

1 But if I file a written motion to dismiss, then the  
2 government can say, "Well, that tolls the speedy trial clock,  
3 you know, and you can now review to your heart's content and,  
4 you know, that's excludable time." So I was prepared even  
11:31AM 5 before the Court made any comments this morning, the first  
6 thing I was going to say is that I'm orally here at this  
7 hearing moving to dismiss for all of the reasons I just said.

8 And I think it's a confluence of Mr. Govey's Sixth  
9 Amendment right to confront his accusers, to have access to the  
11:31AM 10 documents and the evidence that would do that. Not his  
11 attorney, not his attorney's paralegal, but him, the ability to  
12 see those things and contribute to the defense in a meaningful  
13 way.

14 I also think it's a *Brady* issue. I'm not accusing the  
11:31AM 15 government of intentionally withholding *Brady* from me at this  
16 juncture because I don't have to, because the law is that they  
17 have the duty to turn over anything to me that's in the  
18 possession or their constructive possession, which I've always  
19 argued absolutely includes the United States Department of  
11:32AM 20 Justice even if it happens to be their DC division.

21 This was not a surprise to them that this investigation is  
22 going on. But the law is equally clear that these *Brady*  
23 disclosures have to be made in time to be of use to the  
24 defense. And there is a legion of cases that talk about the,  
11:32AM 25 you know, how that timing breaks down, whether the Court

1 granted a -- in the middle of trial continuance or exercise its  
2 discretion not to, and so on and so forth. But the law is  
3 clear, I didn't get it in enough time to be able to  
4 meaningfully use it. So I think that there should be dismissal  
11:32AM 5 on those grounds as well.

6 And in addition to that, the fact that it's kind of a  
7 damned if you do, damned if you don't, if I make those motions  
8 or if I ask for a continuance to review 75- or 100,000 pages,  
9 we're prejudicing Mr. Govey's trial rights. I suppose the  
11:32AM 10 government is going to say an index came with discovery.  
11 That's helpful as far as it goes, but that doesn't get me where  
12 I'm going. I need to be able -- with this sensitive  
13 information as relevant as it is.

14 And I should say this was already called out by the  
11:33AM 15 government. I suspect that's kind of the government's argument  
16 is, like, "Well, we gave you an index. What are you  
17 complaining about?" Maybe they won't argue that, but I'm just  
18 anticipating that they're going to factually present to the  
19 Court that they provided an index. That doesn't help me a  
11:33AM 20 great deal because in my experience the utility of an index is  
21 it tells you what you can discard and what you can just not  
22 bother looking at.

23 And I think we're already a step past that analysis. What  
24 I mean by that is if the government has already looked at the  
11:33AM 25 DOJ files, the government, using their own sometimes

1 parsimonious standards of what I could and could not make use  
2 of and what is and is not discoverable already made the  
3 decision that it is important enough, relevant enough to  
4 disclose and then to give it to me. I feel it's incumbent upon  
11:34AM 5 me and my staff to go through every page. And the index  
6 doesn't turn the pages any faster for me or enable me to  
7 utilize them in a meaningful fashion. And none of those has  
8 any effect on my ability to work with Mr. Govey under the Sixth  
9 Amendment.

11:34AM 10 So I'm open to any other questions the Court has. And I  
11 should say that this was my -- I wasn't prepared to give sort  
12 of my exhaustive statement on what our theory of the case was  
13 and how it applies, and so I hope the Court and the record  
14 takes this in the extemporaneous spirit that it was given. But  
11:34AM 15 that's my response to the Court's question right now.

16 THE COURT: Well, we're in the situation we are.  
17 And unfortunately, neither you nor I have the luxury of being  
18 deliberative and doing research and writing. I have a factual  
19 question and then a few legal questions.

11:34AM 20 Factual question: Are you aware of -- is it  
21 Investigator Beeman? Mr. Beeman? Deputy Beeman? Which is it?

22 MR. SCOTT: I think his title is investigator.

23 MR. MARRETT: That's right.

24 THE COURT: Investigator Beeman, did he testify  
11:35AM 25 before Judge Goethals?

1 MR. SCOTT: I know that he was not one of the  
2 deputies that invoked. I can say that with some assurance.  
3 Beyond that, I don't know the answer to that question.

4 MR. MARRETT: I know that he's testified at at least  
11:35AM 5 one of the evidentiary hearings and did not invoke.

6 THE COURT: Okay. And has he, to your knowledge, if  
7 you -- are you aware, was he questioned by any of the federal  
8 investigators in the civil rights investigation?

9 MR. SCOTT: I have to believe that discovery would  
11:35AM 10 reveal that, that the DOJ files would give me the answer to  
11 that, but I don't know the answer to that because I haven't  
12 been able to get through all of that discovery. So the short  
13 answer to that is I don't know.

14 MR. MARRETT: The answer is yes, Your Honor. There  
11:36AM 15 have been, I believe, two interviews.

16 THE COURT: Okay.

17 MR. SCOTT: And so --

18 MR. MARRETT: And I will represent that in the  
19 discovery that we produced to you, I believe the discovery that  
11:36AM 20 was produced yesterday there are a record of the relevant  
21 portions of that interview that had been produced to the  
22 defense.

23 THE COURT: All right.

24 MR. SCOTT: So I think what -- and I hope I'm not  
11:36AM 25 interrupting the Court, but I think that exchange right this

1 moment really kind of demonstrates what I'm talking about here.  
2 That's a perfectly reasonable question for the Court to ask and  
3 a very important question -- that's an important fact for me to  
4 know. I mean, I have this man under subpoena. If the  
11:36AM 5 government doesn't call him, I'm going to call him.

6 And as I stood here, even though I have these documents  
7 apparently, and I take Mr. Marrett at his word, I don't know  
8 the answer to that question because I cannot go through all  
9 this material. So I just share that with the Court that we've  
11:36AM 10 demonstrated here in realtime the problems that I'm having and  
11 what we're up against given the record where it is.

12 THE COURT: I understand it.

13 Now I have a little bit different legal analysis than what  
14 you said. I -- you've now renewed your motion to dismiss the  
11:37AM 15 charges. And there's a lot of important legal principles at  
16 play. There's the *Brady*, *Brady* obligations, timely disclosure,  
17 and disclose where you can meaningfully use it. And I  
18 understand what you're saying, and I agree that *Brady* is at the  
19 heart of it.

11:37AM 20 But I think the way I look at it, you need to take a step  
21 back. And it would be -- you're asking me to dismiss the  
22 charges based on my supervisory authority. And you have to  
23 show two things: You have to show a government misconduct,  
24 flagrant. Negligence is not good enough, but recklessness is.  
11:38AM 25 Reckless disregard for constitutional rights to Mr. Govey.



1 Deliberative indifference to his rights is enough. And you  
2 have to show prejudice.

3 I'm not struggling with the prejudice component because in  
4 this case, Mr. Govey's constitutional right to a speedy trial  
11:38AM 5 is being prejudiced by the failure to timely disclose these  
6 documents that you can use it. So that gets me to is -- the  
7 issue is was there flagrant government misconduct? And that's  
8 the way I see it.

9 Because the -- you're saying it doesn't have to be  
11:39AM 10 intentional. I'm familiar with that law, but that's kind of in  
11 a concept of when you had a trial or comes up during the trial,  
12 it's not really before trial. And technically we're still  
13 before trial. And you have to show misconduct on the  
14 government's part, and it's got to be more than negligence.

11:39AM 15 And what we have here is the informant scandal, it's  
16 common knowledge in Orange County, common knowledge for years.  
17 You're deaf, dumb, and blind if you do not know the seriousness  
18 of that, and particularly when there's a federal investigation  
19 going on. So we know that. And then the percipient witnesses  
11:40AM 20 involved in this case, one who actually sees the drugs in 2015  
21 asserted his Fifth Amendment rights.

22 And as you know, and I believe you agree with me, I found  
23 that very significant. You don't have a uniformed Orange  
24 County Sheriff going to a courtroom in a murder case -- I guess  
11:40AM 25 there was a murder conviction -- and assert his Fifth Amendment

1 rights not wanting to talk about the informant scandal. And  
2 how that could not see the light of day in any case where  
3 Deputy Larson is a witness is beyond me.

4 So with that said, my question to you is, I have a little  
11:41AM 5 bit of a different legal analysis, or the way I'm looking at it  
6 is pretty minimally. Do you agree with that analysis? If you  
7 do agree with it, tell me why you believe the government's  
8 conduct here has been in reckless disregard of Mr. Govey's  
9 constitutional rights under the Sixth Amendment.

11:41AM 10 MR. SCOTT: I think that is the correct legal  
11 analysis. I think it's the *Chapman* case that informs the  
12 Court's supervisory power to dismiss for a *Brady* violation.  
13 And the Court's correct, I think that that is accurate, that it  
14 needs to be something more than negligent.

11:41AM 15 I guess what I want to first say by way of response is in,  
16 you know, my prior comments saying I'm not accusing the  
17 government of intentionally doing this or that. I'm doing that  
18 for two reasons: One, because I take -- I try to take  
19 seriously my professional obligations and my -- you know,  
11:42AM 20 ethical duties not to overtry my case as far as that goes and  
21 to accuse them of things that I don't have hard evidence for.

22 And what I'm thinking of is I don't have some e-mail, you  
23 know, where Brad Marrett is saying, "We're going to turn the  
24 screws on Mr. Govey and withhold *Brady* to do him in." I mean,  
11:42AM 25 I don't think that there's anything out there like that. That

1 was kind of the spirit of the comments I was making before.

2 But the answer to the question, does this rise at least to  
3 the level of recklessness? I'm not trying to be unctuous. I  
4 can't say it better than how the Court said it, that you would  
11:42AM 5 have to be deaf, dumb and blind to not anticipate this issue.

6 I mean, it's -- you can't pick up the newspaper without seeing  
7 this issue. It's been covered on the local news. It's in  
8 every "Daily Journal" and, you know, it's talked about in  
9 hallways, and it really is the buzz of the legal community and

11:43AM 10 has been for a number of years. And so it just -- it defies  
11 logic. It defies any sense to suggest that you could indict a  
12 case relying chiefly on a person who's invoked in uniform under  
13 oath and relying on this -- on a unit in the group of personnel  
14 who are currently the -- in the cross-hairs of an investigation  
11:43AM 15 by your own office and not anticipate that this might be a  
16 problem. And I think that that's a far sight more than  
17 negligence. And, you know, it certainly comfortably fits  
18 recklessness. And I think that more than gets it done under  
19 the analysis that the Court laid out.

11:43AM 20 THE COURT: Okay. Mr. Marrett, I assume you want to  
21 be heard, sir.

22 MR. MARRETT: Thank you, Your Honor.

23 So I want to back up for a second and address kind of the  
24 first question that the Court posed to Mr. Scott, and that was,  
11:44AM 25 you know, identify what are the facts or the documents that are

1 going to support your theory in the case. And early on there  
2 were two things that the defense had asked for: The Frosio  
3 file and some grand jury testimony from Investigator Beeman.  
4 Those are the only two sets of documents that the defense has  
11:44AM 5 ever identified as documents that they believe exist and that  
6 they want to have. I can represent that those have all been  
7 produced to the defense.

8 Beyond that, the defense hasn't identified anything that  
9 they believe exist that would support their case that hasn't  
11:44AM 10 been disclosed and -- or I should say also timely disclosed.  
11 So I don't think, frankly, that the defense can establish that  
12 there's been any prejudice. And backing up even further --

13 THE COURT: Wait. I'm sorry, Mr. Marrett. I have a  
14 big problem with that. Mr. Govey, I've been very aware of,  
11:45AM 15 he's been very upset with me, he's been very upset with  
16 Mr. Scott. He wanted to go to trial last year before  
17 Christmas. And over his objection on at least two occasions,  
18 I've continued the trial. Speedy trial rights is in our Sixth  
19 Amendment. It's in the federal statute. He has a right to a  
11:45AM 20 speedy trial, and he's not been going to trial.

21 And putting aside, because I do not know the details of  
22 the 75,000 pages of documents that Mr. Scott's referring to, I  
23 am aware that you hit me with a motion yesterday asking me to  
24 go review 20,000 pages of documents and make a decision on  
11:46AM 25 whether to sustain the privilege asserted by the District

1 Attorney's Office and the Orange County Sheriff's Department,  
2 whether these documents are privileged because of the  
3 deliberative privilege or the attorney work product.

4 And then you asked me to, "And if you do not sustain the  
11:46AM 5 privilege" -- oh, excuse me, I left one out -- "And that in  
6 these documents if they are disclosed, you're going to put  
7 people's life at risk, that they could be killed." You hit me  
8 with that yesterday afternoon. I have to make a decision of  
9 that magnitude, over 20,000 pages of documents before a trial  
11:46AM 10 starts on Monday.

11 And then you tell me -- and you file it under seal and  
12 Mr. Scott and Mr. Govey doesn't even get to see the motion.  
13 And then you say, "And if you don't sustain the privilege,  
14 don't show it to Mr. Govey, just show it to Mr. Scott." I  
11:47AM 15 mean, what world are we living in? How is that realistic or  
16 practical?

17 MR. MARRETT: So let me -- let me take a step back,  
18 Your Honor, because I think, No. 1, talking about pages takes  
19 out of perspective the efforts that the government has gone to  
11:47AM 20 in this case.

21 THE COURT: It doesn't matter. I'm going to assume  
22 once I screamed foul and once Mr. Scott screamed foul that you  
23 put an army of U.S. attorneys on it. Okay. I get that. But  
24 the point is -- and it goes to a comment that I thought maybe I  
11:47AM 25 regretted saying earlier to you is the Orange County Sheriff's

1 Department made an informed decision that they were going to  
2 put Deputy Larson and the other deputies involved in the  
3 special handling unit on the street.

4 Any case that they're involved in as a result of that  
11:48AM 5 decision, every case they're involved in, this issue of their  
6 credibility is now on the table. And every case that the  
7 federal government decides to do through the joint task force,  
8 you want to prosecute a defendant -- you want to prosecute a  
9 defendant where these officers are percipient witnesses, you're  
11:48AM 10 going to have to do a *Brady* disclosure. And I don't know  
11 whether you were involved at the get-go, so I'm not trying to  
12 shoot the messenger.

13 I take it -- I agree with Mr. Scott, I -- my little  
14 limited dealings with you, I don't think you're an intentional  
11:48AM 15 malicious guy that you wanted to deny Mr. Govey of his Sixth  
16 Amendment rights. I'm not saying that. But what I don't  
17 understand is why did the feds take this case? Why would you  
18 compromise a federal investigation into the Orange County  
19 Sheriff's Department? Why would you drag the federal  
11:49AM 20 government into this informant scandal, which on its face is  
21 very, very troubling for 37.5 grams of meth?

22 Let's say he's distributing it to his friends where he's  
23 living at. That's not a federal case, you know. And this  
24 isn't my call, I understand that. That's the U.S. Attorney's  
11:49AM 25 call. And I respect the separation of powers. But you now

1 have sucked me into this because now I have a defendant who  
2 wants to go to trial and you very recently produced 75,000  
3 pages of documents to Mr. Scott that there's no way he can get  
4 through by Tuesday. And then you hit me with over 20,000 pages  
11:50AM 5 of documents, and I have to make a decision by Tuesday whether  
6 you got to produce those and I could be putting some lives at  
7 risk? That's what you're telling me in the motion that you --  
8 the sheriffs don't want me to turn these over to Mr. Scott.

9 And, you know, I'm at a loss because I've had national  
11:50AM 10 security cases where you're dealing with some of the most  
11 sensitive state secrets. And I have been aware of cases, if  
12 you reveal that information, sources will be killed and have  
13 been killed. And those are sources that are protecting our  
14 national security of our country. And in those cases, the  
11:50AM 15 powers that be, whether that be the CIA, whether that be the  
16 FBI, counterterrorism, the government has to make a decision,  
17 dismiss or disclose. And in many cases they say "dismiss."

18 You didn't make that decision. You're saying we're going  
19 forward. But there is no way that Mr. Scott or I can  
11:51AM 20 meaningfully go through this document dump and give you the  
21 rulings that you want or for him to meaningfully use them at  
22 trial. So there has to be a continuance. And if there's a  
23 continuance, I violated his speedy trial rights. So I just  
24 think a prejudice argument is a no-brainer for me.

11:51AM 25 MR. MARRETT: Well, and I do just want to make a

1 record, Your Honor. I'm not trying to argue against you, but  
2 the request from the defense for discovery for all of the  
3 information about Deputy Larson's time and special handling,  
4 all of the information about Investigator Beeman, all the  
11:52AM 5 information about two other inmates in the jails was an  
6 extremely broader request.

7 And I think, frankly, the government in collecting and  
8 reviewing the documents that we received, over 25,000 records  
9 from the Department of Justice, although we produced a  
11:52AM 10 substantial number of pages, my understanding is that the  
11 actual number of records, some were closer to 2,000, so it's  
12 less than ten percent of the records that we got. And even  
13 that --

14 THE COURT: But it -- I'm not going to play the  
11:52AM 15 semantical game of records. What matters to me is pages. I  
16 cannot get through 20,000 pages of documents by Tuesday to make  
17 incredibly significant decisions. And then Mr. Scott has to go  
18 through that. It's a physical impossibility. And I feel we're  
19 getting down a road that, quite frankly, I don't think you want  
11:52AM 20 to go down. Your *Brady* obligation is independent of anything  
21 the defense asks.

22 So the fact that what I know, and Mr. Scott can clarify  
23 that, the minute he was on this case, he was snapping at your  
24 heels probably because Mr. Govey was putting pressure on him,  
11:53AM 25 "Hey, we think that this is a vindictive prosecution. We think



1 there's motive and bias by the deputies that were involved.  
2 We're going to want this discovery. We're going to want this  
3 discovery." And that was last year.

4 MR. MARRETT: It was, Your Honor. And when  
11:53AM 5 Mr. Scott made that request to me, I began my efforts to  
6 collect the documents, to begin looking through them to make a  
7 determination for myself whether there is, in fact, any  
8 potential *Brady* material in there.

9 THE COURT: But see, that's where I'm having the  
11:53AM 10 disconnect. Given -- we're not just talking this is the normal  
11 case. We're talking this is a case where the percipient  
12 witnesses are involved in the jailhouse informant scandal,  
13 something of major legal significance. In fact, my time on the  
14 bench and in Orange County, it is probably the most significant  
11:54AM 15 issue since I've been here.

16 And then almost two-and-a-half years ago you have a sworn  
17 deputy assert -- with four others assert their Fifth Amendment  
18 rights and having a murder conviction set aside. And then  
19 we've had, I think, what was it, seven murder cases set aside.

11:54AM 20 Again, I -- maybe this is before your time, there is this  
21 program called "Hogan's Heroes." Sergeant Schultz, "see  
22 nothing, hear nothing, know nothing." I would think that any  
23 reasonable prosecutor, if they have this case against  
24 Mr. Govey, they need to know about the informant scandal. They  
11:55AM 25 need to know and they're on notice that Deputy Larson asserted

1 his Fifth Amendment rights.

2 You're going to have to do discovery on *Brady* and disclose  
3 all the information relevant to credibility. And the fact of  
4 your motion, you concede that this information is material.

11:55AM 5 Because you're saying don't -- we don't want to disclose this  
6 because of privilege that the Orange County Sheriff's deputies  
7 are telling you to assert or the District Attorney's Office are  
8 telling you to assert who are the ones who are being  
9 investigated by the feds for now almost two years.

11:55AM 10 And like I said, I'm frustrated. I don't understand why  
11 I'm in this position, or more importantly, why Mr. Govey is in  
12 this position over 37.5 grams.

13 You know, if you told me he was *Dekraai*, mass murderer, if  
14 you told me he was the leader of the Aryan Brotherhood ordering  
11:56AM 15 hits, I'd say, you know what, life's tough and maybe we got to  
16 deal with it. But this is 37.5 grams, and we're compromising  
17 all of these issues for this case?

18 MR. MARRETT: Well, I mean, Your Honor, I wasn't  
19 involved in the initial charging decision in this case, but  
11:56AM 20 this is a case that meets federal guidelines for mandatory  
21 minimum sentences. Those are Congress's laws. Those aren't  
22 the laws that I wrote. I just work for the prosecutor's office  
23 prosecuting those crimes. So this is a federal offense. It's  
24 not a, you know, solely a state offense. And it is, I think, a  
11:56AM 25 very serious offense, although there are more serious offenses

1 that the Court sees. This is still a federal case.

2 THE COURT: All right. Well, it's probably not  
3 productive for you and I to be beating up on one another on  
4 that point. But the point that really does matter is how is  
11:57AM 5 the government -- and when I say "the government," the royal  
6 government. Not you personally, but the whole team of the  
7 United States Attorney's Office, when you take a case like this  
8 involving percipient witnesses with Mr. Govey that are involved  
9 in the jailhouse informant scandal, and he is, how could you  
11:57AM 10 not realize at the get-go before you even go to the grand jury  
11 for an Indictment, we're going to have a significant discovery  
12 obligation?

13 This is not your typical 37.5 grams case. This is  
14 something unique. I wish it wasn't. I wish it was just one of  
11:57AM 15 those run-of-the-mill cases that, okay, we're going to  
16 prosecute it. It's worth the resources. Mr. Govey's this  
17 dangerous guy. We don't want him on the street. I get that.  
18 But this is much more than that. This case is connected to the  
19 informant scandal.

11:58AM 20 And not realizing that, that's what I'm having a problem  
21 with. You don't need a request from Mr. Scott. I don't know  
22 what -- the attorneys who are working on it before, but I would  
23 argue and I would assert to you, it is ineffective assistance  
24 of counsel for them not to be all over you saying, "I want  
11:58AM 25 everything on Larson. I want everything on Beeman." I would

1 be concerned if they weren't asking you for those.

2 I mean, the Rules of Evidence, 608, right of  
3 confrontation, they don't have any meaning. You're just going  
4 to ask a witness about what's favorable to the government?

11:59AM 5 He's going to attack their credibility.

6 And like I said before to you on the simple basis general  
7 level, Deputy Larson, when the government calls him to testify,  
8 he'll talk about the informant scandal. When the defense wants  
9 him to talk about it, he refuses, just on that simple level.

11:59AM 10 That shows a mode of bias towards the government. That's going  
11 to come out.

12 You're going to need to do a *Brady* obligation, *Brady*  
13 review, *Brady* disclosure right away. You don't need to wait  
14 for defense counsel to be asking it. I mean, the --

11:59AM 15 MR. MARRETT: And so, Your Honor, I do just want to  
16 at least put on the record what has transpired over the last  
17 couple weeks and what we've done, because we received the  
18 documents. We reviewed them --

19 THE COURT: I'm going to assume, because you  
12:00PM 20 apprised me and you're probably getting frustrated with me  
21 because I interrupted, I read it. You put 12 U.S. attorneys on  
22 it. You're reviewing thousands of documents. I get that. But  
23 it's too late is what I guess I'm saying. It's too late.  
24 You've given me 20,000 pages of documents that I have to look  
12:00PM 25 through to make these incredibly significant legal decisions.

1 And then whatever I decide to do, Mr. Scott's got to get  
2 through 20,000 pages of documents that are material, I should  
3 add, and that's all going to happen by Tuesday?

4 MR. MARRETT: Well, Your Honor, I don't know if the  
12:00PM 5 government's conceding that the information is material. I  
6 mean, part of the problem is going through these records as the  
7 defense's theory has been amorphous. It's been shifting. And  
8 it's a broad theory of general bias for the government and  
9 against Mr. Govey. They've asked for records -- housing  
12:01PM 10 records from inmates that aren't on trial here.

11 The defense has asked for essentially the discovery so  
12 that it could prove up its own variation of the *Dekraai* case.  
13 They've asked for all the housing records, all the special  
14 handling records, all of the records from these deputies, their  
12:01PM 15 time in the jail or their connection, their conversation with  
16 people in the jail. Their --

17 THE COURT: But they have to, Mr. Marrett. If he  
18 didn't, they'd be ineffective.

19 MR. MARRETT: I understand it, Your Honor.

12:01PM 20 THE COURT: Whether you like it or I like it,  
21 because I don't, Mr. Govey is involved in that. He is.

22 MR. MARRETT: And I'm --

23 THE COURT: Just like Deputy Larson and  
24 Investigator Beeman are. I wish they weren't. Gosh, you know,  
12:01PM 25 just on the jury instructions alone on this 37.5 grams, I spent

1 more time on your jury instructions than I did in my six-week  
2 Howard trial with Mr. Tenley in the back there.

3 MR. MARRETT: And I understand, Your Honor, and I'm  
4 not faulting the defense for asking for those documents, but  
12:02PM 5 they asked for them. And the government has gone -- not only  
6 met its discovery obligations, produced these documents to the  
7 defense before trial, but it's gone -- it's gone --

8 THE COURT: You're saying you met your discovery  
9 obligations. I would beg to differ. You haven't met your  
12:02PM 10 discovery obligations. You dumped 75,000 pages of documents on  
11 the defense. You dumped over 20,000 pages of documents on me.  
12 And there is no realistic way that Mr. Scott and Mr. Govey or I  
13 can get through those documents through Tuesday. That's not my  
14 problem, that's not Mr. Govey's problem, that's not Mr. Scott's  
12:02PM 15 problem, that's the government's problem.

16 The government was the one who brought these charges. The  
17 government's witnesses are Larson. They're the ones who did  
18 the search. They were the ones who seized the evidence.  
19 That's your problem. And that gets into the former discussion  
12:03PM 20 we had, Mr. Marrett, is -- and you weren't involved in the  
21 charging, so I got the wrong person. Whoever the U.S. Attorney  
22 was involved at the time charging and going to the grand jury  
23 should have known about this and should have known what they  
24 were getting the feds into. And I'm saddened that they've  
12:03PM 25 sucked the United States Attorney's Office, which I hold in

1 very high esteem, and they sucked us and dragged us into the  
2 informant scandal. And I'm worried you're compromising the  
3 federal investigation of it.

4 Why in the world should Mr. Govey and Mr. Scott be getting  
12:03PM 5 documents from that confidential investigation that's quite  
6 important that was ordered by the Attorney General of the  
7 United States? I'm at a loss to understand that there was  
8 just, like, no foresight on where are we going with this? Is  
9 Mr. Govey worth it?

12:04PM 10 And again, Mr. Marrett, I'm frustrated because now it's my  
11 problem. I have to make a decision. Am I going to dismiss  
12 these charges against Mr. Govey or not? Where before, you  
13 know, those decisions are your decisions. And I might not  
14 agree with them, but separation of powers, that's your call.

12:04PM 15 But now you're telling me, "Here's all these documents. Go  
16 look at them, Judge. Mr. Scott, go look at them. And you have  
17 to look at them and meaningfully adopt them into your trial  
18 strategy, 100,000 pages of documents by Tuesday." I mean, I  
19 don't -- I don't even know if a computer inputting it, you  
12:05PM 20 could do it.

21 MR. MARRETT: Well, I do want to point out a couple  
22 things, Your Honor. No. 1, of the documents, this isn't just a  
23 single document dump. The government began producing documents  
24 on February 15. On February 17 by then, 56,000 of the pages  
12:05PM 25 had been produced. So defense had this for a week now. And

1 I --

2 THE COURT: Really?

3 MR. MARRETT: Well, and, Your Honor --

4 THE COURT: Oh, my God. 75,000 pages you can get  
12:05PM 5 over in a week? Really?

6 MR. MARRETT: Your Honor, we were here a couple  
7 weeks ago and -- when the government asked for its continuance  
8 initially. And the government was reviewing documents and  
9 producing them and was going through 25,000 records. We culled  
12:05PM 10 that down to about 2,000 records or so. And that's what has  
11 been turned over to the defense.

12 The government's put in substantial effort to assist the  
13 defense in -- I guess let me back up a little further. The way  
14 that we got those documents was by running search terms for the  
12:06PM 15 deputies' names, for search terms also that the defense had  
16 provided and asked the government to search through.

17 THE COURT: I get it.

18 MR. MARRETT: We did that.

19 THE COURT: And I sense since I was beating on you,  
12:06PM 20 you made great efforts, and I'll take that into account. But  
21 the problem is it was flawed at the inception and that's where  
22 you're just not addressing and you're trying to tell me, "Well,  
23 look at all the great things we've done." Well, you know,  
24 Mr. Govey's speedy trial rights, he's probably saying, "I don't  
12:06PM 25 care. You violated my -- because you've now given me 100,000



1 pages of documents to look over by Tuesday."

2 So it doesn't -- you know, quite frankly, it doesn't  
3 matter what great efforts you've made over the past couple  
4 weeks that I've been beating on you. The fact of the matter is  
12:07PM 5 you didn't get the job done. You didn't get the job done  
6 because -- and what it now sounds like is you couldn't get the  
7 job done. You physically could not get the job done.

8 The problem was, again, at the time these charges were  
9 brought, no one was thinking or cognizant, and I'm at a loss to  
12:07PM 10 understand why not, that there was a lot of baggage with these  
11 witnesses. And if you're going to prosecute this case against  
12 Mr. Govey, you're going to bring the feds right into the  
13 informant scandal, and you're going to be disrupting and  
14 interfering with the federal civil rights investigation.

12:07PM 15 And I saw that last year and I made comments, maybe some  
16 were appropriate, maybe some were inappropriate, but that was  
17 your call. But now you've made it my call. You made it my  
18 call because now there's no way that Mr. Scott nor I can get  
19 through 100,000 pages of documents by Tuesday. We just can't  
12:08PM 20 do it. And since we can't do that, we would have to have a  
21 continuance. If we have a continuance, his speedy trial rights  
22 are violated. So that's not an option.

23 So the argument is, you know, I don't think your conduct  
24 personally was intentional. But I'm having, as you can tell, a  
12:08PM 25 hard time believing that there wasn't misconduct on the

1 government's part. And the misconduct started not realizing  
2 what you were getting yourself into by prosecuting these  
3 charges against Mr. Govey when Deputy Larson and Deputy Beeman  
4 are percipient witnesses. That was your problem.

12:09PM 5 MR. MARRETT: Now I will say, Your Honor, and I'm  
6 not trying to offend the Court, but -- or Mr. Govey or his  
7 counsel, but the government has now produced all of these  
8 records to the defense. It has the universe of documents that  
9 are both potentially relevant. Also things that the government  
12:09PM 10 has gone, I think, beyond its discovery obligations in order to  
11 ensure however broad the defense theory is, the documents have  
12 been produced. The defense can ask for a continuance and not  
13 violate his speedy trial rights.

14 THE COURT: So give up your speedy trial rights as  
12:09PM 15 we go through these?

16 MR. MARRETT: And, Your Honor, we have satisfied our  
17 discovery obligation by producing these documents in advance of  
18 trial. I know there's a large volume of it and there's a lot  
19 to get through for the defense, but they can run their own  
12:09PM 20 searches on them. They can review them. They can ask for  
21 continuance if they need more time to get through the  
22 documents. That's a decision that the defense can make. The  
23 government has produced the documents in advance of trial and,  
24 I think, satisfied its discovery obligations.

12:10PM 25 THE COURT: Okay. All right.

1 MR. MARRETT: Can I just have one moment, Your  
2 Honor?

3 THE COURT: You may.

4 **(Government counsel conferred off the record.)**

12:10PM 5 THE COURT: You may. It's your record.

6 Mr. Scott, if you'd be kind enough to confer with  
7 Mr. Govey. Make sure there's nothing else that he thinks is  
8 important that I should know as part of the record.

9 MR. SCOTT: Yes, Your Honor.

12:12PM 10 **(Pause in proceedings.)**

11 THE COURT: Mr. Marrett.

12 MR. MARRETT: So the only other two points that I'd  
13 make just for the purposes of making a record, No. 1, as far  
14 as -- and again, I don't mean to beat a dead horse, but I just  
12:12PM 15 want to make sure it's in the record is when we went and  
16 searched for these documents, we used very broad search terms.

17 The searches -- the government was searching for these  
18 records not because we were aware of anything that was material  
19 or relevant to the defense or any *Brady* or *Giglio*. But in  
12:12PM 20 order to both comply with the Court's order that we search this  
21 discovery and to ensure ourselves that there is no *Brady* or  
22 *Giglio* material.

23 So I think, you know, partly in the volume of records that  
24 we've given to the defense, I don't think -- I mean, not all of  
12:13PM 25 those records certainly are material to the defense. A lot of

1 the records, in my understanding, relate to the defendant's  
2 2012 state case, which defendant either likely already has or  
3 received in discovery in those cases.

4 I understand there was discovery that wasn't produced, and  
12:13PM 5 I think we've now produced to the defense what they had asked  
6 for in that prior case. So a lot of the discovery, if not the  
7 vast volume of it, is discovery related to his 2012 state case  
8 and the issues that came up there. And so I don't think  
9 there's been any record made by the defense. There's no  
12:13PM 10 evidence that the government knew or should have been -- should  
11 have known about the discovery issues in the defendant's 2012  
12 state case, the issues with informants in that case, the issues  
13 involving their claims relating to not getting discovery in  
14 that case. That's one, Point 1.

12:14PM 15 The second point is, Your Honor, there's also no evidence  
16 that the government knew or should have known that  
17 Deputy Larson had invoked the Fifth in a prior case in state  
18 court not involving Mr. Govey.

19 THE COURT: Really? I mean, I was the one who  
12:14PM 20 raised this and confirmed it. That was common knowledge of the  
21 deputies. I think it was all plastered over "OC Weekly,"  
22 "Orange County Register." I can't sit here and tell you  
23 the "L.A. Times," but I can assure you it was in the "Register"  
24 and the "OC Weekly." And I believe the "Daily Journal" might  
12:15PM 25 have reported it as well.

1 And I just know in all legal circles, whether you're at  
2 Bar events or whatever, it was the talk of the town. Can you  
3 imagine the sight of five uniformed Orange County Sheriff  
4 deputies asserting their Fifth Amendment right, saying if they  
12:15PM 5 answer questions about how they handled the informants in the  
6 jail, that they could incriminate themselves? That's pretty  
7 darn significant. And I knew about it.

8 MR. MARRETT: Those were the only two points, Your  
9 Honor.

12:16PM 10 THE COURT: All right. Mr. Scott.

11 MR. SCOTT: The only reply to what the government  
12 has said is I just wanted to make one factual clarification  
13 because there was at least one point where the government said,  
14 you know, we started making efforts to gather these things, you  
12:16PM 15 know, from the moment it was brought to our attention or words  
16 to that effect. And I want to clarify that we laid our  
17 requests out at Docket 36. So this is in the record where I  
18 put in the letters that I had been sending since essentially  
19 the moment I started working with Mr. Govey and then I filed  
12:16PM 20 all of those at Docket 36.

21 The government at Docket 88 acknowledged in moving for the  
22 continuance that it wasn't until late December -- until shortly  
23 before the trial date that was originally set in January 9 that  
24 they requested the information from the Department of Justice.  
12:17PM 25 So I just don't want there to be any, you know, confusion or

1 misperception that the government, you know, started gathering  
2 Department of Justice investigative files when they indicted  
3 the case. That certainly would have been the best practice.  
4 But then they also didn't start gathering it when I started  
12:17PM 5 asking for it in late November. They --

6 THE COURT: When was the Indictment returned?

7 MR. SCOTT: August of --

8 THE COURT: Of 2017?

9 MR. SCOTT: Yes, Your Honor.

12:17PM 10 THE COURT: And then -- so -- and Deputy Larson  
11 invoked in 2015. I can't remember the month.

12 MR. SCOTT: January '15 sounds right.

13 MR. MARRETT: I believe it was October of 2015.

14 THE COURT: It was 2015 --

12:17PM 15 MR. SCOTT: It was before.

16 THE COURT: -- in any event.

17 MR. SCOTT: Before the Indictment, I think, is what  
18 matters.

19 THE COURT: Right. And when was the Court of  
12:17PM 20 Appeals' decision affirming Judge Goethals disqualifying the  
21 Orange County District Attorney's Office from prosecuting the  
22 *Dekraai* case?

23 MR. SCOTT: You know, I don't know that off the top  
24 of my head. I could provide that to the Court, but I don't  
12:18PM 25 have it in at my fingertips.

1 THE COURT: No, I can figure it out.

2 MR. SCOTT: So the point I was making is that the  
3 government acknowledged, and this was on the docket at CR 88  
4 that they didn't request the files from the Department of  
12:18PM 5 Justice until late December of 2017. So I just want to make  
6 sure that that's clear.

7 The Court invited me to confer with Mr. Govey, and so I  
8 want to reemphasize that it was, you know, the informant  
9 documents having to do with Alexander Frosio. It is our  
12:18PM 10 earnest belief that that really lays out what was done to  
11 Mr. Govey incorrectly. That's what they tried to protect in  
12 dismissing his state court case, and that's still to this day  
13 what we're trying to get to.

14 THE COURT: And it has not been produced, and the  
12:19PM 15 sheriffs aren't giving it to you; right?

16 MR. SCOTT: That's my understanding. Mr. Marrett  
17 has represented that he gave me what the District Attorney's  
18 Office had, which I have reason to believe is separate and  
19 apart from what the special handling unit had. And it wouldn't  
12:19PM 20 surprise me, frankly, if that's what's in this 25,000 pages  
21 that is sitting in camera right now. At least I would hope  
22 that it is.

23 THE COURT: I can't represent -- I didn't even  
24 attempt to look at the 20,000 pages.

12:19PM 25 MR. SCOTT: And I'm not fishing for information.

1 I'm just saying that to my knowledge, I don't have the -- the  
2 real special handling unit Frosio file to the best of my  
3 knowledge.

4 Mr. Govey also just wanted to point out that in -- it's  
12:19PM 5 his view that the circumstances of his arrest while he was on  
6 bond for what originally was a state court case in this case  
7 further support the theory of animus. And I didn't include  
8 that when I was laying out the whole timeline. He -- before  
9 the government obtained the Indictment that they did in this  
12:20PM 10 present case, he was in state court on this matter.

11 He went to court one day as he was directed to do, and he  
12 was arrested in the parking lot on this federal Indictment.  
13 And to this day we're trying to get the keys that were taken  
14 from him, the money that was on him, and he was then  
12:20PM 15 transported in apparently, according to him, personal vehicles  
16 of the arresting agents that were involved here, Larson in  
17 particular. So in his view, that adds to kind of the  
18 appearance of animus and vendetta theory that we've been --

19 THE COURT: Give me that one again. That  
12:20PM 20 Deputy Larson was involved in the federal arrest?

21 THE DEFENDANT: Yes.

22 MR. SCOTT: Yes.

23 THE DEFENDANT: I was transported in his truck to  
24 Agent Sanders over there, his personal truck. I was put in the  
12:21PM 25 front seat, and he drove me somewhere, and I was transferred to



1 ATF Agent Sanders' vehicle and then brought to federal court  
2 that day within a couple hours.

3 I went to court -- I was out on bail. I went to court.  
4 They jumped me in the parking lot. One cop took my phone, one  
12:21PM 5 took my keys, one took my money. They put me in Larson's car.  
6 After three hours standing in the parking lot, they put me in  
7 Larson's truck, and he drove me to a location I didn't really  
8 know where it was at, but they transferred me to ATF  
9 Agent Sanders' vehicle, and he brought me to federal court.

12:21PM 10 THE COURT: Okay.

11 MR. SCOTT: And that's all we have to add. Thank  
12 you.

13 MR. MARRETT: Three quick things, Your Honor.

14 First, I can represent to the defense that -- well, back up --  
12:21PM 15 I'm not sure exactly what the defense thinks is the Frosio  
16 file. The defense has never made it clear what it believes is  
17 contained in this Frosio file. However, I can represent that I  
18 have produced to Mr. Scott under the protective order the TRED  
19 records that he's asked for for Mr. Frosio, the housing -- the  
12:22PM 20 other housing records for Mr. Frosio and the special handling  
21 log, any of the entries that mention either Mr. Govey or  
22 Mr. Frosio and other entries as well.

23 But I've produced to the defense whatever they've asked  
24 for with respect to this Frosio file and -- or what I  
12:22PM 25 understand could potentially even be considered in their idea

1 of whatever this Frosio file is. And I think they're using  
2 that term loosely. But I believe we've produced all of that to  
3 the defense. And that's not what the Court has in camera.

4 I also want to clarify the record that Mr. Scott had  
12:22PM 5 talked about the day he made his request, and the government's  
6 filing went ahead and requested information from the DOJ. The  
7 government also in between searched its own records, and it  
8 made inquiries of its own civil division to gather documents as  
9 well. So our efforts started before the timeline that  
12:23PM 10 Mr. Scott suggested. It was immediately after we received that  
11 request that we began requesting information.

12 And then -- and I think the last point is Mr. Scott  
13 brought up the circumstances of Mr. Govey's arrest, and my  
14 understanding is that there was an Indictment returned. The  
12:23PM 15 federal arrest warrant was issued, and he was arrested pursuant  
16 to that warrant. I think Mr. Scott had said that it was before  
17 the Indictment was issued, and I think that's factually  
18 inaccurate. There was an Indictment and then an arrest warrant  
19 that was served the next day.

12:23PM 20 THE COURT: Okay.

21 MR. SCOTT: Maybe I misspoke, but he was arrested on  
22 the federal Indictment. He had been in state court proceedings  
23 prior to the federal Indictment being brought. So if I gave a  
24 misimpression, I didn't mean to. He was arrested on the  
12:24PM 25 federal Indictment.

1 As to the state of discovery, I just wish I knew whether  
2 or not what Mr. Marrett is representing is true, but I just  
3 don't know because I can't get through all that material.

4 THE COURT: All right. Well, this is obviously a  
12:24PM 5 very significant decision and one that I will be issuing a  
6 written order on. I don't know whether I'll be able to get the  
7 order out next week or the following week, but I will get a  
8 written order out. Given the trial is set to happen Tuesday,  
9 though, I will give you my oral ruling, but that's just for  
12:24PM 10 your notice purposes. My reasoning will be set forth in the  
11 written order.

12 I am going to dismiss the charges with prejudice. I  
13 believe Mr. Govey's Sixth Amendment rights to a speedy trial,  
14 compulsory process and confrontation have been denied by the  
12:25PM 15 government's failure to timely disclose material documents that  
16 Mr. Govey needs to expose percipient witnesses' bias against  
17 him and to attack their character for truthfulness.

18 Again, I will have my reasoning set forth in detail and  
19 findings of fact and conclusions of law in a written order that  
12:25PM 20 will be out certainly within two weeks. But given the  
21 significance, I want to take my time with it.

22 My understanding, Mr. Govey, is you have no holds or  
23 detainers, so I will order the marshals to release you  
24 forthwith. You'll probably have to go back to MDC for  
12:25PM 25 processing.

1 THE DEFENDANT: Thank you.

2 U.S. MARSHAL: If I may, Your Honor. Marcelino  
3 Hazelwood on behalf of the Marshal Service.

4 It is my understanding that Mr. Govey does have a \$5,000  
12:26PM 5 misdemeanor warrant out of the Orange County Sheriff's office,  
6 so it's really dependent on whether or not they would pick him  
7 up on that warrant. I don't know that for sure. We haven't  
8 conferred with them, but that warrant is in the system.

9 THE COURT: Okay. So you're just giving me the  
12:26PM 10 heads-up. I obviously -- you're going to transport him back to  
11 MDC, and then you're going to let the County authorities know,  
12 and then they'll either come or they won't.

13 U.S. MARSHAL: That's right, Your Honor.

14 THE COURT: Anything further?

12:26PM 15 MR. SCOTT: No. Thank you.

16 THE COURT: Okay.

17 THE COURTROOM DEPUTY: All rise.

18 **(Proceedings concluded at 12:26 p.m.)**

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